

**Memorandum**

CONFIDENTIAL

To: The Hon. Tommy Wells, Chairman  
Committee on the Judiciary and Public Safety  
Council of the District of Columbia

From: Crowell & Moring LLP

Date: June 25, 2013

Re: Analysis of Human Rights Watch Report: *Capitol Offense-Police Mishandling of Sexual Assault Cases in the District of Columbia*

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**I. INTRODUCTION AND BACKGROUND**

It is critically important for the people of the District of Columbia to have confidence that their police department is aggressively and effectively investigating sexual assault cases, and treating sexual assault victims with respect. The Human Rights Watch Report, “*Capitol Offense: Police Mishandling of Sexual Assault Cases in the District of Columbia*,” cast doubt on the Metropolitan Police Department’s (MPD’s) effectiveness. The report was scathing, accusing MPD of failing to document and investigate sexual assault cases, and of mistreating sexual assault victims. MPD’s response to the report was swift: Chief Cathy Lanier said the report was “based on flawed methodology” and that “the report makes sweeping allegations that are not backed by facts and undermine the credibility of HRW.” (Cathy Lanier Press Release, January 24, 2013).

The Committee on the Judiciary and Public Safety of the District of Columbia Council, through its Chairperson, Tommy Wells, retained Crowell & Moring LLP to analyze the HRW Report and advise the Committee on steps it might take in response. The Committee asked the Firm to complete an analysis of the HRW Report and draft a memorandum summarizing the analysis and any potential legislative action that might be taken in response. In addition, the Firm has agreed to provide legal advice to the Committee regarding the scope and focus of any oversight hearings.

We have concluded that while the report is flawed in certain respects, it was a catalyst for positive change. The HRW Report identified several areas where improvements could be made in MPD’s policies and procedures. MPD has concurred with and implemented many of HRW’s suggestions. We also confirmed that that MPD has made a lot of changes in its personnel and procedures since the incidents in the report occurred, and that the situation the report portrays is not how MPD functions today.

This report is intended to be a forward-looking, objective assessment of the HRW Report. It is organized as follows: (1) steps taken by Crowell & Moring to investigate HRW's findings; (2) Crowell & Moring's assessment of the report; (3) practices used in other cities; and (4) recommendations for what should be done to ensure victim-centered and effective handling of sexual assault cases.

## **II. EXECUTIVE SUMMARY**

The HRW Report cast a spotlight on an aspect of law enforcement that is not often discussed. Because of the intimate nature of these heinous crimes, they often go unreported; they are difficult to investigate, and difficult to prosecute. The HRW Report gave voice to a group that has too often suffered in silence—victims of sexual assault.

### **A. Summary of Our Analysis of the HRW Report**

#### **1. The HRW Report Has Been A Catalyst For Positive Change.**

The HRW Report resulted in MPD's re-evaluation of personnel, procedures, and practices in sexual assault investigations. Though MPD gradually improved procedures for handling sexual assault cases starting in 2008, the HRW Report accelerated the improvements. Many of the individuals and organizations that deal with victims of sexual assault on a daily basis—hospital nurses, prosecutors, and victim advocates—have seen significant improvements in MPD's responsiveness, teamwork, and victim-centered approach since HRW issued a draft report in May 2012.

#### **2. MPD Did Not Fail To Document And Investigate 170 Sexual Assault Cases.**

While the HRW report raised many valid issues and made important recommendations, the assumptions regarding the accuracy of the data it used, as well as the methodology supporting its conclusion that MPD failed to document and investigate over 170 allegations of sexual assault were flawed. HRW sought to determine whether MPD investigated a case by comparing the dates of victims' sexual assault, forensic evidence examinations ("SANE exams"), conducted by an independent program at Washington Hospital Center (explained further below), with police incident reports.<sup>1</sup> That was an unsound strategy. HRW was never provided with victim names, which are confidential. Using only the dates of SANE exams, HRW assumed it could come up with an accurate list of all of the dates when a victim received a SANE exam and reported the assault to MPD. But without victim's names or access to the

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<sup>1</sup> The D.C. SANE Program provides comprehensive care to adult victims of rape, sexual assault, and other sex crimes. The D.C. SANE Program is a partnership between the Executive Office of the Mayor, Office of Victim Services and the Washington Hospital Center, where medical forensic examinations are conducted. The program is staffed 24 hours-a-day, 7 days-a-week by nurses with specialized training in medical forensic evidence collection. Examinations are available to victims within 96 hours of an incident.

underlying SANE reports to check the accuracy of the data, HRW was ultimately unable to do that. For victims who received a SANE exam and are known to have reported to MPD, we reviewed police reports from the dates that the HRW report alleged to be “missing” and for which HRW suggested that no investigation had been performed. The HRW conclusion that there was a failure to “document and investigate” allegations of sexual assault was simply not accurate. Our review determined that investigations were indeed conducted in most of those cases. Indeed, some of those investigations resulted in arrests.

### **3. HRW Omitted Facts That Would Have Put Cases In Context.**

The HRW Report identified several instances where victims complained about MPD’s handling of their cases. We assume that the victims’ complaints were valid and sincere. After interviewing victims and reviewing MPD’s files for the eight victims highlighted in the report, plus others, we found that there were facts and circumstances absent from the HRW Report that did not provide the full factual context for some of the cases referred to in the report. Information that may have been favorable to MPD was omitted. However, due to victim confidentiality concerns, as well as an effort to focus on forward-looking system improvements, our report does not contain an assessment of specific cases.

### **4. MPD Investigators Have Made Mistakes.**

MPD estimates that it handled over 1500 investigations of sexual assaults during the period captured in the HRW Report. MPD concedes that not every one of those investigations was well-handled. The HRW Report is replete with statements by victims who felt blamed, belittled, and not believed by detectives in the Sexual Assault Unit (SAU). We do not challenge those accounts. Some detectives conducted long, intensive interviews while a victim was exhausted and traumatized from the assault, before the victim had had an opportunity to sleep. Moreover, files show that MPD closed some investigations prematurely. HRW highlighted 52 cases in the summary of their report and said that MPD handled the cases inappropriately. MPD agreed that officers had misclassified eight of those cases.

### **5. The HRW Report Says More About MPD’s Past Than Its Present.**

The HRW Report acknowledges that MPD has made changes since 2008, and indeed, that a preliminary draft of the report shared with MPD in May 2012 prompted other improvements. But many of the allegations in the report predate those changes, so the HRW Report does not reflect the current state of MPD’s handling of sexual assault cases.

### **6. The HRW Report Makes A Few Complaints Sound Like Many.**

Although HRW cited numerous cases in its report, the HRW Report recounts the experiences of eight victims over 100 times, leaving the reader with the impression that the handling of such cases and complaints represent a majority or large percentage of cases. For example, the concerns expressed by victim Maya T. were repeated at least 29 times in the HRW Report. Yet, these eight victims represent only one-half of one percent of cases handled during the 2008-2011 timeframe.

**7. MPD Has Made Policy And Personnel Changes In the Sexual Assault Unit To Improve Performance.**

The current make-up of MPD's SAU is different from what it was two years ago. Detectives involved in several of the cases highlighted in the HRW Report are no longer in SAU. MPD has also made changes in its handling of sexual assault investigations, several of them in direct response to the HRW Report.

**8. MPD Should Improve Its Communication With Victims Of Sexual Assault.**

Many of the problems described in the HRW Report could have been avoided through better communication between MPD and victims. Some detectives made insensitive comments to victims; they did not return phone calls; in some cases, a thoughtful explanation about why a detective made certain decisions about a case might have defused a victim's distress about those decisions. Moreover, there were instances where communications were less than clear between MPD and the U.S. Attorney's office; this left victims confused and uninformed about their case status.

**9. Community Outreach Is An Important Weapon Against Sexual Assault.**

After the HRW Report was released in January, 2013 to broad media coverage, there was a dramatic drop in victims seeking forensic examinations in D.C., although the overall number of sexual assaults reported in the city has gone up. People familiar with annual reporting patterns attribute the sudden drop in forensic exams to the publicity surrounding the HRW Report. Official statistics collected by the SANE program support this conclusion. Such unintended consequences, however, show that citizens are paying attention to public discourse about HRW's report, which suggests that public outreach could be used to re-establish trust in MPD.

**10. More Training Would Improve MPD's Handling of Sexual Assault Cases.**

Our interviews with police personnel, victim advocacy groups, hospital nurses, prosecutors, and others involved in MPD's response to sexual assault demonstrate that additional police training at all levels is critical. While there have been improvements in the sexual assault training that police officers receive, there is a need for additional training for patrol officers, SAU investigators and detectives, and for the general MPD membership.

**11. There is a Broad Consensus On Best Practices and Recommendations for Improvements.**

MPD, HRW, forensic medical practitioners, advocates, experts, and prosecutors agree on several improvements that can be made in MPD's investigations of sexual assaults. That consensus is reflected in our recommendations.

## **B. Summary of Our Recommendations**

Detailed recommendations appear at the conclusion of this report, but our primary recommendations are:

- **Advocates:** Sexual assault victims should have the right to have a victim advocate with them during police interviews.
- **Independent Expert Consultant:** We propose that the city retain an expert in sexual assault investigations to serve as an advisor to MPD to ensure that all aspects of sexual assault investigations and training in D.C. are based on current best practices. Moreover, the independent expert should review police practices to ensure that policies are implemented properly and that sexual assault investigations have a victim-centered approach.
- **Training:** Additional training would improve MPD's ability to handle sexual assault investigations. MPD should receive the funding necessary to provide training to its officers necessary to improve the quality of victims' interaction with law enforcement.
- **Improve Handling of Complaints:** Processes within MPD and perhaps in the Executive Branch (the Office of Police Complaints) should be honed so citizens who want to make complaints can do so without difficulty, and with the knowledge that every complaint will be investigated.
- **Oversight:** The Council should, at least annually to start, review MPD's handling of sexual assault investigations. The Independent Expert Consultant can assist the Council in this oversight process. That process should include oversight of the other agencies and organizations who work with sexual assault victims.

## **III. STEPS WE TOOK TO ANALYZE HUMAN RIGHTS WATCH'S FINDINGS**

### **A. Summary of Work Performed**

Crowell & Moring reviewed the HRW Report and MPD's response, investigative files for the cases highlighted in the HRW Report, additional files provided by MPD (the "missing" files), training materials, public outreach materials for D.C. and other cities, legal sources, and other materials provided by interviewees. We interviewed representatives of HRW and MPD, plus professionals who work in the field of sexual assault investigations in D.C. and other cities. We also interviewed some of the victims who were highlighted in the HRW Report.

## **B. What We Did**

### **1. HUMAN RIGHTS WATCH**

#### **(a) Interviews and correspondence with Sara Darehshori**

Sara Darehshori is Senior Counsel to the U.S. Program at Human Rights Watch, and author of the HRW Report. We met personally with Ms. Darehshori three times, and spoke many times by telephone, for a total of at least 14 hours. Ms. Darehshori welcomed our investigation and was extremely cooperative and helpful. Among other things, Ms. Darehshori explained the impetus for the report, her methodology, and details about her investigation. She provided contact information for other people, and gave us information about certain victims. We also discussed her recommendations for change.

#### **(b) Review and analysis of the HRW Report and related documents received from HRW, including:**

- Sample sexual assault reports, including WACIIS reports and warrant requests
- FBI murder and rape statistics
- MPD arrest data
- Correspondence between HRW and sexual assault victims
- Correspondence between HRW and MPD

### **2. METROPOLITAN POLICE DEPARTMENT**

#### **(a) Interviews and correspondence**

We met multiple times with officials and others at MPD, including Chief Cathy Lanier, Assistant Chief Peter Newsham, Commander George Kucik, Lt. Vendette Parker, Sgt. Keith Reid, Kelly O'Meara (Executive Director, Office of Strategic Change), and one rank-and-file member of the Sexual Assault Unit at MPD. MPD, too, welcomed our investigation and cooperated with us, sometimes spending hours answering our questions. They provided data, training materials, and other information.

#### **(b) Review and analysis of case files and other documents, including:**

- Case files for each of the victims who were highlighted in the HRW Report
- Training program on sexual assault investigations for officers within and outside SAU

- MPD's response to the HRW Report
- Evidence of MPD's matching process, including 180+ police investigative files
- MPD Standard Operating Procedures, memos, and internal correspondence
- MPD/SAU audit report
- Pleadings and depositions in *McGaughey v. District of Columbia* (2007)
- Correspondence between HRW and MPD

### 3. **ADVOCACY AND VICTIM SERVICES ENTITIES**

The sexual assault experts and victim advocates we interviewed agree that sexual assault investigators must be attuned to the neurobiology of trauma, the unique needs and behaviors of sexual assault survivors, and the vagaries of investigating and proving cases in which the victim may – due to intoxication, drug use, or having been unknowingly drugged – have little or no recollection of the crime. Our investigation included:

- Meetings and telephone interviews of individuals with experience with and knowledge of the MPD sexual assault procedures, including:
  - Dr. Heather DeVore, Director of SANE Program at Washington Hospital Center
  - A current D.C. SANE nurse
  - A former D.C. SANE nurse (wishes to remain anonymous)
  - Devin Trinkley, CNP, former Director of D.C. SANE
  - Melissa Hook, Director, Office of Victim Services
  - Bridgette Harwood and Nikki Charles, Co-Executive Directors, NVRDC
  - Kelly Higashi, Chief, Sex Offense and Domestic Violence Section, U.S. Attorney's Office for D.C.
  - Chai Shenoy, Co-Founder and Executive Director, Collective Action for Safe Spaces; former Executive Director, D.C. Rape Crisis Center
- Meetings, telephone, and written communications with experts in sex crimes investigation, including:

- Linda Fairstein, former Chief of the New York County District Attorney's Sex Crimes Prosecution Unit
- Sgt. Elizabeth Donegan, Sexual Assault Investigator, Austin Police Department, Austin, Texas
- Catherine Johnson, Instructor/Training Coordinator, North Carolina Department of Justice Academy; Board Member, End Violence Against Women International (EVAWI); formerly a sexual assault detective in the Kansas City (Missouri) Police Department
- Robert Canaff, Board Member, EVAWI
- Dr. Kimberly Lonsway, EVAWI
- Telephone interview with D.C. Executive Branch
  - Christian J. Klossner, Deputy Director, Office of Police Complaints

#### **4. UNITED STATES ATTORNEY'S OFFICE**

We had several conversations with Assistant United States Attorney Kelly Higashi, Chief of the Sexual Assault Unit at the U.S. Attorney's Office in D.C. We discussed some cases highlighted in the HRW Report, and MPD's practices and procedures in prosecution of sexual assault cases. Ms. Higashi provided the different perspectives of police investigators, victims, and prosecutors. Ms. Higashi emphasized that prosecutors review cases brought to them with an eye toward whether the evidence is sufficient to prove a case to a jury.

#### **5. LEGAL RESEARCH**

- Legal research regarding victims' rights law, including the federal Crime Victims' Rights Act (18 U.S.C. § 3771) and D.C. Crime Victims' Bill of Rights (D.C. Code § 23-1901)
- Legal research regarding D.C. oversight mechanisms
- Legal research regarding national statistics on sexual assault reporting rates
- Legal research regarding sexual assault offenses in the District of Columbia, including elements of offenses and requisite proof



#### **IV. THE LAY OF THE LAND IN D.C. – INFRASTRUCTURE FOR SEXUAL ASSAULT INVESTIGATIONS**

##### **A. Sexual Assault Response Team (SART)**

One cannot fully understand the role of MPD in sexual assault cases without understanding the interdependent role of each member of the Sexual Assault Response Team, known as SART. Consistent with best practices nationally, SART is a partnership of public and private agencies that work to coordinate a high-quality, multidisciplinary, victim/survivor-centered response to sexual assault cases. Melissa Hook of D.C.'s Office of Victim Services describes the SART as the "heart and soul" of D.C.'s criminal justice system's response to sexual assault. SART members include:

- MPD Sex Assault Unit
- United States Attorney's Sex Offense and Domestic Violence Section
- Victim Advocates
- U.S. Park Police
- Sexual Assault Nurse Examiners (SANE) Program

In October 2008, the D.C. SANE Program was transferred from Howard University Hospital to Washington Hospital Center. The SART developed a more efficient and comprehensive coordinated response to address victims' immediate needs at WHC, where, in a single location, medical treatment is provided and evidence collection is conducted by a SANE nurse, the victim is interviewed by a SAU detective, and the victim is provided with support and referrals for services by an advocate. SART ensured that a dedicated "quiet room" was established within WHC's Emergency Department so that victims could be interviewed in a quiet, private location.

SART developed a system which integrated the use of the WHC/MedStar dispatch system and the MPD Command Information Center, which reduced the response time of SANE nurses, SAU detectives and D.C. Rape Crisis Center advocates to the hospital. The system also enables the assigned SANE nurse and SAU detective to communicate with each other to convey relevant information, if necessary, while en route to the hospital. In cases where victims report to the hospital before notifying police, the dispatch system is able to directly summon an SAU detective to respond, in lieu of a patrol officer, so that the victim only has to speak to a single law enforcement officer.

According to representatives on the SART, the group was not functioning well before 2008. During the period the HRW Report covers, this improved, although some individuals who attended SART meetings felt that the SART members mistrusted one another and not much was accomplished. After the draft HRW report was issued, there was actually an increase in the level of distrust among SART members. Since Fall 2012, however, the SART teamwork has improved. The team has more frank and productive discussions, and members are more

cooperative with one another. A SART retreat in early 2013 reportedly made the group more cohesive.

## **B. Advocates in D.C.**

- Network for Victims' Services of D.C. and D.C. Rape Crisis Center

Until October 1, 2012, the D.C. Rape Crisis Center (DCRCC) provided victim advocates for sexual assault victims receiving SANE exams at WHC. DCRCC's program was in place during HRW's review for its report. These advocates, who were drawn from a large pool of community volunteers trained by DCRCC, only had contact with victims during the SANE examination.

The draft HRW Report alerted the Office of Victim Services – the office that contracts with the advocacy program – of gaps in the advocacy services being provided to sexual assault victims in D.C. This allowed OVS to craft a solicitation for a broader service advocacy program to replace the system used by DCRCC when DCRCC's contract expired. The Network for Victim Recovery of D.C. (NVRDC) won this procurement and began providing professional victim advocates for sexual assault victims on October 1, 2012. Since then, any victim receiving a SANE exam is met at WHC by a professional advocate who is employed by NVRDC. The same advocate providing support at the hospital is also available to victims afterwards as a case manager to provide assistance with victims' needs, including applying for crime victims' compensation funds, housing, counseling, follow-up medical care, and legal services. The NVRDC advocates are already well-integrated into D.C.'s sexual assault response team. MPD has been impressed with NVRDC's professional approach and responsiveness. Having a smaller number of highly trained professional advocates who work on a daily basis with SAU detectives, SANE nurses, and others responding to sexual assaults, has benefitted sexual assault victims in D.C.

## **C. Other Victims' Services**

- The **Office of Victim Services (OVS)** is a grant-making agency, in addition to advising the Mayor on policy and legislation. OVS operates the SANE program in partnership with MedStar at Washington Hospital Center. OVS funds DCRCC's counseling services and NVRDC's advocacy program.
- MPD has a **Victim Services Unit**. Its advocates provide services to victims of sexual assault who have made a report to MPD. Prior to the release of the HRW draft report, MPD victim advocates were only available when an arrest was made in a case. Since the draft HRW Report was released, MPD victim advocates are more broadly available to victims who report to MPD. In October 2012, MPD obtained funds to hire two new victim advocates.
- The **United States Attorney's Office's victim advocate program** provides services to victims in cases where the USAO has decided to move forward with prosecution.

- Although it no longer provides advocates, the **D.C. Rape Crisis Center** still provides a 24-hour hotline for rape victims, counseling, and community outreach in D.C.

#### **D. Sexual Assault Unit in MPD**

About 20 investigators and detectives are assigned to the Sexual Assault Unit within MPD. The most senior detective has been in the unit for approximately 10 years; the most junior investigator started in April 2013. The SAU is headed by Lieutenant Vendette Parker, who became head of the Unit in September 2012. Second-in-command is Sergeant Ronald Keith Reid, who has been in SAU since 2006. SAU is an elite unit; detectives are selected to serve there based on their skill as investigators and their interest in the challenging work.

#### **E. Sexual Assault Nurse Examiner Program (SANE)**

The D.C. SANE Program provides comprehensive care to adult victims of rape, sexual assault, and other sex crimes. The program is a partnership between OVS in the Executive Office of the Mayor, and Washington Hospital Center/MedStar, where medical forensic exams are conducted. The program is staffed 24 hours-a-day, 7 days-a-week by nurses with specialized training in medical forensic evidence collection. The nurses are employed by the D.C. Forensic Nurse Examiners, an independent non-profit organization that is funded through OVS. SANE exams, which typically take 3 or 4 hours and involve meticulous collection of evidence, are available to victims within 96 hours of an incident. SANE nurses also provide testing for HIV and sexually-transmitted diseases, and referrals for counseling and crime victim compensation.

#### **F. Citizen Complaint Process**

A citizen who is unhappy with the way she or he was treated by a police officer has two avenues available to complain: the police department (through the offending officer's supervisors, up to the Chief of Police, or through Internal Affairs); and the Office of Police Complaints. The Office of Police Complaints (referred to as OPC) is an administrative agency within the District of Columbia's executive branch. It is independent of MPD and acts as an investigator and arbitrator of disputes between citizens and the police.

### **V. ASSESSMENT OF THE HRW REPORT**

The Human Rights Watch Report brought sexual assault investigations in D.C. under intense scrutiny. This was important because sexual assaults often go unreported, and are difficult to investigate and prosecute. The terrible experiences described by victims in the report should not be ignored. On the other hand, the report was flawed, and did not accurately reflect the present situation in D.C.

#### **A. HRW Methodology: Matching Forensic Exam Reports to Police Reports**

One of HRW's "Main Findings" was that there was a "Failure to Document and Investigate" allegations of sexual assault. As the HRW Report states:

*From 2008 through September of 2011, MPD officers used a variety of mechanisms to effectively shut down investigations—often before they even got started—of cases they did not deem credible. Human Rights Watch’s review of data, agency documents, and police investigative files corroborates the impressions of many victims, community advocates, and witnesses who told us that the MPD often closed cases without meaningful investigation. . . .*

*MPD officers did not document many cases, as is demonstrated by the fact that no incident report exists for a substantial number of cases recorded by Washington Hospital Center as having been reported to police, nor were these cases located in the police database.*

For the reasons discussed below, HRW’s assumptions regarding the accuracy of the data it used and methodology supporting its conclusion that MPD failed to document and investigate over 170 allegations of sexual assault were flawed.

## **1. Flaws in HRW’s Source of Data and Methodology**

In reaching its conclusions, HRW focused on matching the *dates* of SANE examinations at WHC to MPD incident reports. HRW was unable to obtain the names of the victims who received those SANE exams due to confidentiality reasons.

### **(a) The Data**

Pursuant to a Freedom of Information Act request, OVS provided HRW with a list of dates when victims received SANE exams. These exams were coded as a “report” or a “non-report” to law enforcement. HRW limited its analysis to cases coded as “reports.” There were a number of problems with HRW’s use of this data.

- **First**, merely because an exam is coded as a “report” does not mean that a report was actually made to MPD. Sexual assaults may occur in or near D.C. – in Prince George’s County or on the National Mall, for example – but the assault would be under the jurisdiction of and investigated by law enforcement agencies other than MPD. Those victims, however, are treated at WHC. HRW recognized this. In an attempt to weed out those exams coded as “reports” where the sexual assault occurred in another jurisdiction, HRW relied on two logs maintained at various times by individuals involved in the SANE program to ensure it had removed dates when victims reported to jurisdictions other than MPD. HRW assumed that it had been able to remove all reports involving other jurisdictions for the time period October 1, 2008 to November 30, 2009 and also for October 1, 2010 to September 30, 2011. This was an inaccurate assumption. At least nine reports that HRW assumed had been made to MPD during these two time periods had in fact involved other jurisdictions. HRW’s assumption also fails to account for the

precise number of reports made to other jurisdictions between December 1, 2009 and September 30, 2010.

- **Second**, some of the exams that HRW thought were “reports” were actually “non-reports.” HRW had no way to check the accuracy of the list that OVS provided it with the underlying SANE exam files to determine that all those marked as “reports” on the list were actually reported to law enforcement.
- **Third**, because HRW only received dates without associated names, HRW would not be able to account for cases where a victim saw a SANE nurse twice, either twice on the same day or on consecutive days.

### **(b) The Method**

HRW’s methodology rested on the assumption that HRW should be able to find a police report filed within 24 hours after the date of a SANE exam for every SANE exam that was coded as a “report.” Areas of concern raised by this methodology are that:

- **First**, this matching was to be based solely on the *date* of the SANE exam.
- **Second**, the system of using a small window of time following a date of a SANE exam rested on the assumption that reports were always made to police *after* the SANE exam and could not have occurred before. A victim may obtain an exam at WHC up to 96 hours after an assault for the purpose of gathering forensic evidence for investigation. A victim might, therefore, report an assault to MPD and then decide three days later to get a SANE exam. Attempting to match a SANE exam with a police report filed within 24 hours of the SANE exam would not account for cases where the victim reported to police prior to receiving the SANE exam.
- **Third**, it is unclear whether HRW accounted for cases where a victim did not report while at WHC but later chose to report to MPD.

Ultimately, out of 480 SANE exams for which HRW expected MPD to have corresponding reports, HRW initially reported that it was only able to locate matching MPD documentation for 310 exams. This meant that 170 reports were “missing” from MPD’s files, and must not have been investigated. In fact, HRW had been unable to match reports to 183 SANE exams. But in an attempt to be fair to MPD, HRW assumed that 13 of those unmatched SANE exams had been reported to a jurisdiction other than MPD.

### **2. Using Victims’ Names and With Access to the Underlying Data Source, MPD Found the “Missing” Investigation Files or Discovered Why MPD Would Not Have Files for Some of the “Missing” Reports**

Not handicapped by confidentiality rules, MPD was able to use victims’ names to match SANE exams to police reports. HRW provided MPD with a list of dates. These dates were of SANE exams that were “reports” for which HRW expected MPD should have a corresponding

report. We reviewed that list. In turn, OVS provided MPD with the names of all of the victims who saw a SANE nurse during the time period covered by the Report and were coded as “reports.” We reviewed that information as well.

On some dates for which HRW said there was a missing report, more than one SANE exam occurred. Because MPD could not be certain which SANE exam was associated with the missing police report, MPD sought to account for *every* exam that occurred on any date for which HRW said a SANE exam occurred, but MPD was missing a report. Therefore, even though HRW only found that 183 SANE exams were undocumented by MPD, MPD had to account for over 240 SANE exams given at WHC on these dates.

MPD’s first step was to search its own records for reports. Using the dates of the SANE exam and associated names, MPD found documentation for over 180 of the SANE exams that were coded as “reports.”

MPD sought OVS’s help in determining what happened in the other cases for which it did not have documentation. MPD provided OVS with the names and dates for SANE exams for which MPD had been unable to find documentation. OVS pulled the underlying SANE exam reports. These files showed that<sup>2</sup>:

- In 19 of the cases, the jurisdiction involved was not within MPD’s purview and the report would not have been made to MPD.
- In 24 other cases, no report was made to MPD.

There were only five cases in which the SANE exam report showed that the victim had reported the case to MPD, but MPD was unable to find documentation relating to that exam.

Based on a review of the list of SANE exams provided to MPD by OVS, and MPD’s list of files that it located, we have concluded that:

- No SANE exams occurred on eight of the dates for which HRW asserted MPD was missing a report.
- In at least six cases, one victim was listed twice on the same date or two consecutive dates as having received an exam. But because HRW received a list with no names attached to the dates, HRW would not have been able to tell that on these dates, only one victim was seen, and, therefore, MPD would only have one report for those dates.

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<sup>2</sup> In eight cases that were “exam-exempt” (offense that would not yield forensic evidence), OVS did not have the records to determine whether a report had been made to law enforcement or not.

### **3. MPD is Missing Reports for Five Sexual Assault Cases**

Of the over 240 exams that occurred on the dates that HRW identified as having missing reports, over 180 were reported to MPD. The vast majority of those 180+ reports do in fact have matching documentation. A team of five Crowell & Moring lawyers spent several hours reviewing MPD's investigative files for the 180+ cases reported to MPD that match the list of SANE exam dates originally provided by HRW. We matched each MPD file to a victim's name. We determined that not only were investigations conducted in most of those cases, but many of the investigations resulted in arrests. In some cases, the investigation was admittedly inadequate. MPD, having reviewed all of these reports in going through this matching exercise, made the decision on its own to reopen the investigations into several such cases.

The bottom line is that HRW's allegation that MPD failed to document and investigate 183 (modified to 170) reports made to MPD by victims of sexual assault is simply not accurate. In only five cases where a report had been made to MPD did MPD fail to find any documentation of the report. Based on the original 480 reports spanning 3 years reviewed by HRW, the 5 missing reports represent 1.04% of the total.

### **4. HRW's Current Position on the Missing Reports**

After receiving more documents from MPD in June 2013, HRW issued additional analysis, concluding that there was documentation for additional cases, but that a substantial number of those were classified (and classified incorrectly) as something other than sexual assaults. HRW maintains that there are still 64 SANE exams for which there is no documented MPD report. Given the inaccurate assumptions about the underlying data, and the fact that HRW still does not (and cannot) have victims' names, we do not believe HRW would ever be able to reconcile all the SANE exam dates and reports.

#### **B. Analysis Of Allegations Of MPD "Mishandling of Sexual Assault Cases and Mistreatment Of Victims Of Sexual Assault"**

The HRW Report painted a chilling picture of MPD's treatment of sexual assault victims. We do not doubt the victims' accounts in the HRW Report. We accept that those victims had a traumatic experience with MPD. But, we also found that the Report does not tell the whole story, nor does it paint an accurate picture of MPD's treatment of most sexual assault victims.

It is not our intention to criticize the conduct or statements made by any of the victims. It is important for everyone involved, however, to understand that the complaining witness in a sexual assault case – as in any crime – may state a conclusion (*e.g.*, "I was raped," or "my attacker attempted to rape me") and it is the duty of law enforcement – police officers and prosecutors – to determine whether that conclusion establishes the elements of a particular crime. This is true with any allegation of criminal conduct – robbery, burglary, assault, or sex crimes – although victims in the last category are owed a sensitivity occasioned by the intimate nature of their experience. If the assailant was a stranger and the victim alleged that the man displayed a knife and forced her into a stairwell and raped her, it is the responsibility of investigators to determine all of the facts about that encounter to ensure that the identification (if and when made) is proper, and that the acts described make out the appropriate section of the penal law to

be charged. If the assailant is an acquaintance, known to the victim, and her complaint is, for example, that the two had dinner and drinks together before the man accompanied her to her home and tried to rape her – it is *essential* that police and prosecutors explore all of the time the pair spent together (sometimes many hours leading up to the criminal act), again, to establish the facts and charge the appropriate crime – which may or may not prove to be what the victim reported it to be when she made her first call to 911. The concept of prosecutorial discretion is an integral part of what decisions are reached in the charging of any criminal act.

Much of the information reviewed for this analysis consisted of confidential MPD police reports, SANE examination reports and other confidential documents. These documents included not only sensitive personal information, but also confidential health information, protected by federal and District of Columbia law. In order to have access to such sensitive information, the Firm entered into a Confidentiality Agreement with the District of Columbia. While the HRW Report attempted to protect victim confidentiality by changing names, we have determined that following the same process in our report may not be effective in protecting confidentiality. Deductive disclosure can occur when individuals with certain knowledge can piece together the identity of individuals even though their names have been changed. Moreover, we do not intend to challenge any of the victim statements that appear in the HRW Report. Accordingly, while we have conducted a detailed review of the eight victims' cases featured in the HRW Report, due to confidentiality concerns, as well as an effort to maintain a forward-looking approach, we will include no assessment of individual cases in this report that would require the disclosure of confidential information in order to support the basis of any assessment. However, we are available to the City Council or the Judiciary and Public Safety Committee to provide an assessment of any of the cases set forth in the HRW Report in a manner in which victim confidentiality can be maintained.

## **1. Overemphasis on a Few Cases**

HRW relied on numerous cases in its report, but it interviewed and highlighted the stories of eight victims. These eight victims represent one-half of one percent of the 1,500 cases MPD handled between October 2008 and October 2011. HRW repeats the stories of these eight victims over 100 times in the report, leaving the reader with the impression that the number of victims whose complaints are included in the Report is higher than it actually is. For example, victim Maya T's story was repeated at least 29 times in the HRW Report, Susan D's story was referred to 20 times and Shelly G's story was repeated 23 times.

## **2. Incomplete Facts**

While we do not challenge the veracity of the victims' complaints in the HRW Report, our review of the investigative files and interviews with SART members revealed facts and circumstances that made many of these cases difficult to investigate and prosecute. HRW did not include – indeed, may not have known – these additional facts. Moreover, we found that there were facts and circumstances absent from the HRW Report that did not provide the full factual context for these cases. Interviews with SAU detectives, review of the investigative files, and discussions with the U.S. Attorney's Office, advocates, and an expert, led us to conclude that the cases highlighted in the HRW Report are actually good examples of the practical difficulties encountered in investigating and prosecuting sexual assault cases.



Below are three examples of instances where omissions of facts and information from the HRW Report are used to paint a less than complete picture of the MPD's handling of sexual assault cases.

**(a) 2009 OPC Complaint (referenced three times in the Report):**

**(1) What the Report Says:**

- “Another victim wrote in a 2009 complaint that a female SAU detective to whom she tried to report an assault told her that if someone did something to her that she did not like she ‘would say no or tell them to stop.’ She said the detective also asked ‘if [she] didn’t want them to do it, why [she] didn’t stop them.’”

**(2) What the Report Doesn’t Say:**

- HRW based this account on a complaint made to the Office of Police Complaints (OPC). This complaint was investigated by MPD.
- The victim reported to MPD that she went to a local business for a Brazilian Bikini wax on two separate occasions. A Brazilian Bikini wax involves the removal of almost all hair from the pubic region.
- The victim reported that she felt the two technicians who applied the procedure touched her inappropriately on each separate occasion.
- The female SAU detectives interviewed the owner of the business and were given a demonstration of the procedure. During the procedure a technician, wearing gloves, applies wax to the area surrounding the genitals; pressure is applied to the area being treated, and the wax is removed. The pressure is applied to reduce the amount of pain associated with the removal of the wax from the area.
- MPD discussed the case with the U.S. Attorney’s office. The U.S. Attorney’s office determined that there was not sufficient criminal intent to prove that a crime had been committed
- HRW cited this 2009 Complaint three times in the report. The statements of the female SAU detectives, when placed in the context of a Brazilian Bikini wax procedure that occurred on multiple occasions, provides a complete picture which makes the detective’s questions during the course of her investigation more reasonable under the circumstances.

**(b) October 2009 Kidnapping and Sexual Assault Case:**

**(1) What the HRW Report Says:**

- “An October 2009 case in which the victim was handcuffed, driven to an undisclosed location, and sexually assaulted was categorized only as “kidnapping” with no reference to a sexual assault.” (HRW Report, at p. 12).

## **(2) What the HRW Report Doesn't Say**

- The kidnapping occurred in the District of Columbia, but the “undisclosed location” that the victim was driven to and where the sexual assault occurred, was in Prince George’s County, Maryland. Given the cross-jurisdictional nature of this crime, MPD investigated the kidnapping, while the Prince George’s County Police Department investigated the sexual assault. Contrary to HRW’s allegation, MPD actually documented the case as a “kidnapping/sexual assault.”
- The omission of facts is used to paint an unfavorable picture of MPD’s handling of sexual assault cases.

### **(c) Eleanor G.: Paragraph Deleted from a Letter to MPD**

#### **(1) What the HRW Report Says:**

- Eleanor was upset that after she was assaulted in an alley, the police classified the crime against her as an armed robbery, not as an attempted sexual assault.
- The HRW Report says:

*Eleanor wrote to Chief Lanier about her experience and described her rage about this misclassification given how clear she was in her communications with detectives and officers about her assault. A few weeks later, an officer called her at work. During the call he referred to her assault as “an incident” and told her “sometimes we think we’re experiencing something but it isn’t necessarily what we think.” The call was very upsetting for Eleanor.*

- The HRW Report quotes from a letter that Eleanor wrote to Chief Lanier saying that her experience with MPD “caused me more victimization than the actual perpetrator of the crime committed against me.”

#### **(2) What the HRW Report Doesn't Say:**

- A portion of the letter that HRW did *not* include in the report reads as follows:

*"[U]ntil I read the police report, I would have said that I had been treated exceedingly well by your officers. One officer stayed with me in my darkest hour, while I was alone in the hospital, curled in the fetal position, crying my eyes out. He looked miserably uncomfortable, but he steadfastly stayed with me, watched over me, and talked to me to help calm me down. To this day, I feel indebted to his kindness."*

This deleted paragraph does not change the author's disappointment in MPD. But by deleting the paragraph HRW failed to tell the whole story. HRW removed information that would have been favorable to MPD.

## **VI. MPD MADE POLICY AND PERSONNEL CHANGES TO IMPROVE PERFORMANCE BEFORE AND AFTER THE HRW REPORT**

### **A. MPD Made Several Reforms Between October, 2008 And May 2012, When It Received A Draft Of The HRW Report:**

- In 2008, SAU began a mentoring program for new detectives who enter the unit. The new detectives are paired with a mentor who has demonstrated skill in working with sexual assault victims and exhibits a commitment to a victim-centered approach to investigations. The new detectives are mentored for the first month in the unit. At the completion of that period, the mentor detective remains available for questions and advice to the new detective, and also remains available for discussion about cases.
- In 2011, MPD made several personnel changes in SAU by removing detectives who had not displayed a victim-centered approach to investigations following a review of investigative files and citizen complaints.
- In August 2011, MPD released an updated General Order on Adult Sexual Assault Investigations (GO-OPS-304.06). The new General Order stresses the importance of providing an unbiased investigation into all reports of sexual assault, ensuring that MPD members who investigate sexual assault complaints are sensitive to each victim's needs, and the need to provide information and assistance to the victim throughout this traumatic event.

### **B. Following Receipt Of A Draft Of The Draft HRW Report In May 2012, MPD Made Additional Reforms:**

- In June 2012, the Commander of the Criminal Investigations Division issued a division memorandum to SAU detailing several improvements and enhancements to investigative procedures. MPD subsequently issued new Standard Operating Procedures for SAU that memorialized those and other improvements in a formal departmental directive. Among other enhancements, MPD requires multiple levels of review to ensure proper classification, additional discussions with the victim prior to any decision to suspend a case, and enhanced victim-centered approaches to investigations, such as ensuring a private and comfortable area for interviewing victims and allowing victims at least one full sleep cycle before scheduling a follow-up interview unless exigent circumstances require a more immediate follow-up. SAU also expanded the role of its Sexual Assault Victim Services Representatives to include following up with victims in both Sexual Allegations and Sexual Assaults, including misdemeanors; MPD has hired two additional VSU staff members for that purpose.

- On June 8, 2012, MPD issued a department-wide teletype (TT# 06-022-13) to remind all members that in accordance with the General Order on Adult Sexual Assault Investigations, members shall contact the Office of Unified Communications (OUC) to request that an on-duty SAU detective respond to the scene of any alleged sexual assaults and assaults with sexual overtones, regardless of the circumstances. As of September 2012, MPD began using a new computerized records and case management system called ILEADS. The ILEADS system does not allow a case to be initiated without the completion of a PD-251, Incident-Based Event Report. Therefore, it is no longer possible for a detective to initiate an investigative report without first completing a PD-251.
- MPD has increased its efforts to provide formal training to all SAU detectives, especially through programs that promote a victim-centered approach, such as End Violence Against Women, International (EVAWI). All SAU members participated in EVAWI training in the Spring of 2013.
- MPD has implemented a formal case review process in which a panel reviews, on a bi-weekly basis, all cases which have been investigated and are not forwarded to the U.S. Attorney's Office for prosecution.

**C. Since Publication of the HRW Report in January 2013, MPD Has Taken Additional Corrective Action Based on the HRW Report:**

- MPD has reemphasized its role in the Sexual Assault Response Team (SART), embracing the multidisciplinary approach to handling sexual assault investigations.
- MPD now mandates that all interviews with victims be recorded so there will be no question as to how a detective treated a victim.
- Decisions to suspend a case based on an initial victim interview will not be made without conducting a second interview.
- Three of the cases identified in the report have been reopened for further investigation, and new detectives have been assigned to those cases.
- MPD believes that in the past, some detectives have classified cases as misdemeanors because they believed that the USAO would ultimately reduce the charge once the case was presented to it. MPD has re-instructed detectives to use the most serious offense that is articulated by the victim, notwithstanding such concerns.
- MPD has discontinued the use of waiver forms – forms victims signed saying they did not wish to make a formal report of an assault/allegation or did not want police to investigate the incident any further. While using these forms was historically a standard practice that was also used by other agencies and organizations MPD discontinued the practice based on research suggesting that

some traumatized victims may not be able to think clearly shortly after an offense occurs.

## **VII. THE HRW REPORT SAYS MORE ABOUT MPD'S PAST THAN ITS PRESENT.**

MPD began making significant reforms in 2008, after the *McGaughey* lawsuit was filed in 2007. These reforms are ongoing and continue today. The HRW Report nonetheless cites numerous examples of police misconduct that predate the 2008 reforms. Specifically, HRW cited pre-reform examples of police misconduct 63 times in the Report. Moreover, HRW frequently used these negative pre-reform examples to suggest that those practices exist today.

The HRW Report mentions some changes, but suggests that reforms and personnel changes have had little or no positive impact. Yet, we found consensus among leaders of organizations that work with sexual assault victims, including SANE practitioners, prosecutors and victim advocates, that MPD has made important and meaningful changes over the last few years, and these improvements are not reflected in the HRW Report's conclusions. Professionals who interact with both MPD and survivors of sexual assault see the HRW Report as more about how the MPD responded to sexual assault in the past than about how MPD responds to sexual assaults in the present. Indeed, many felt that the HRW Report was too historical.

Here are some examples:

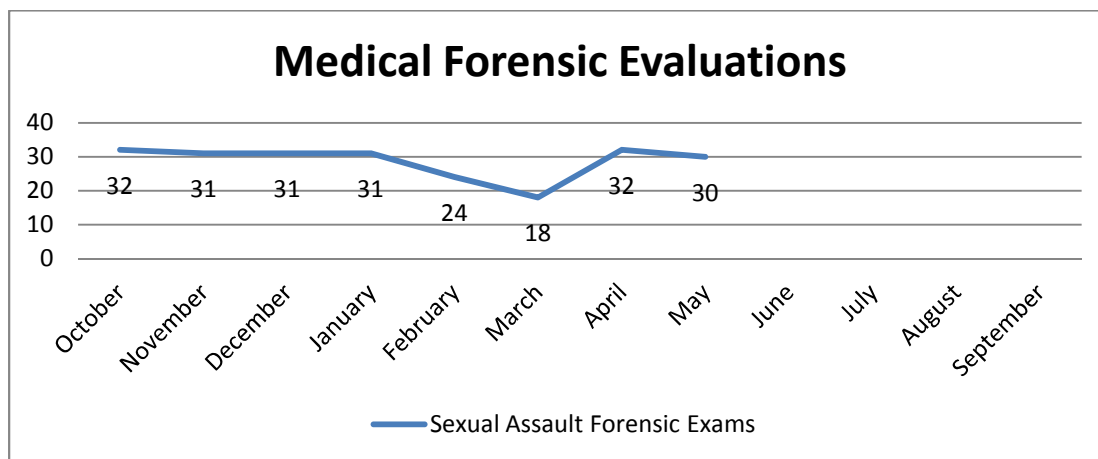
- A SANE nurse said that MPD has been doing little things that help a lot with communication between nurses and MPD. Detectives now will wait around at WHC to speak with the nurse before she does her exam. They are responsive when nurses call with information that might be helpful to the investigation. In her opinion, MPD is much more victim and patient-centered, and the detectives also are showing more respect to the nurses.
- Nikki Charles, co-founder of NVRDC, noted that the HRW Report would have been much more useful had it been published in the summer of 2012 (according to the original publication schedule). MPD had already implemented a number of the report's recommendations when the report was released. As a result, the report did not describe NVRDC's perception of the current situation and environment. According to Ms. Charles, MPD is responsive to complaints about SAU detectives.
- Melissa Hook, Director of OVS said she wished HRW had not taken so long to release the report – that its usefulness diminished given all the changes that were in place by the time the report was released in January 2013.
- Finally, Kelly Higashi, Chief of the United States Attorney's Sex Offense and Domestic Violence Section, thought that the HRW Report did not reflect the current performance of MPD. Ms. Higashi believed that MPD had started making significant improvements even before the HRW Report was published, and that MPD continues to work towards that end. Decreased Number of SANE Exams in the Wake of HRW Report

The Network for Victim Recovery of D.C. and OVS/SANE have reported that since the HRW Report was issued, there has been a decrease in the number of sexual assault victims who request SANE exams. NVRDC has noticed a discernible deficit of trust in MPD among victims. According to NVRDC, victims fear they will be treated poorly by MPD.

The SANE program noted the same dramatic drop in victim requests for medical forensic evaluations due to sexual assaults in the wake of the HRW Report. The number of reported evaluations through Washington Hospital Center fell by 20% in February 2013. In March 2013, the number of cases reported fell by 30%. In discussing reporting statistics, Dr. DeVore, the SANE Medical Director, said that when the SANE program started in 2008, SANE saw 10-15 patients per month. That number has steadily increased without much advertising to an average of 30-35 patients per month. Immediately following the publication of the report – in February and March – the numbers dropped down to 2009 levels.

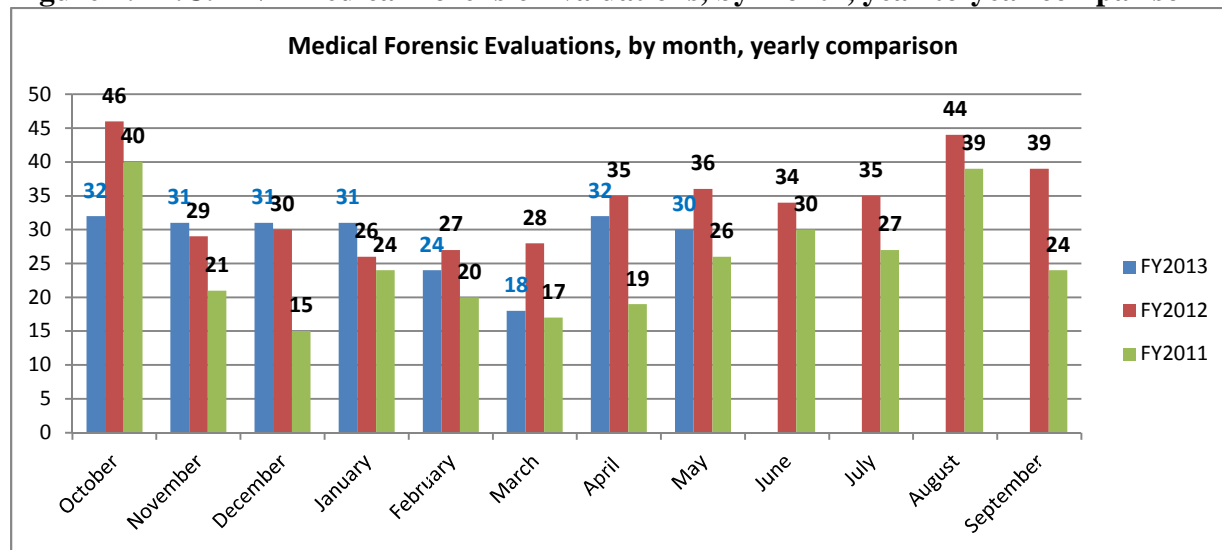
The following figures, graphs, charts, and explanations were provided by the SANE Program:

**Figure 1: D.C. FNE Medical Forensic Evaluations**



The above chart will represent only the medical forensic evaluations performed during this Fiscal Year FY2013. In May 2013, there were 30 medical forensic evaluations performed.

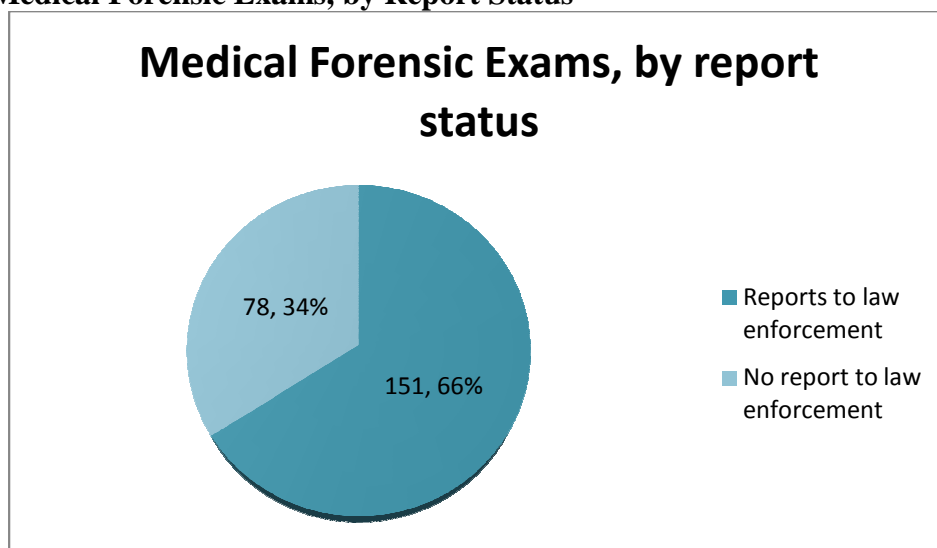
**Figure 2: D.C. FNE Medical Forensic Evaluations, by month, year-to-year comparison**



SANE evaluated 30 patients during the month of May 2013. That statistic is indicated by the blue bar. This number still represents a decrease over the preceding year.

Year-to-date, DCFNE conducted 229 medical forensic evaluations. As compared to this same period for FY 2012, there is an 11% overall decrease in the number of patients evaluated between last year and this year for the first eight months of the fiscal year (257 patients evaluated in FY 2012 vs. 229 patients evaluated in FY 2013 from October-May). *This represents a fairly significant and dramatic decrease in the number of SANE exams performed since the release of the Human Rights Watch report, Capitol Offense.* This is the lowest number of patients evaluated in a single month since April 2011. (*emphasis added*)

**Figure 3: Medical Forensic Exams, by Report Status**



Thus far in FY 2013, approximately 66% of D.C. SANE cases were reported to law enforcement and 34% of SANE cases were not reported to law enforcement. This represents a significant shift from FY 2012, during which 81% of SANE cases were reported to law enforcement and 19% of SANE cases were not reported to law enforcement. *There appears to be a trend away from reporting to law enforcement.* (emphasis in original).

SANE officials note two important aspects of these statistics: (1) “a fairly significant and dramatic decrease in the number of SANE exams performed since the release of the Human Rights Watch report, *Capitol Offense*,” and (2) *there appears to be a trend away from reporting to law enforcement.* Both of these conclusions are troubling. While it should be noted that the level of reporting has rebounded, SANE attributes the significant decrease in reporting of sexual assault to the publicity surrounding the HRW Report.

Notwithstanding the drop in SANE exams, MPD reports an increase in overall reporting of sexual assaults. In fact, the number of reports has increased fairly steadily since 2011. (In the world of sexual assault investigations, increased reporting is a good thing, since sex crimes are disproportionately unreported.) In September 2012, MPD rolled out a public outreach program on Washington’s college campuses called “U-Ask.” Through a Smartphone application, MPD encourages college students to report sexual assaults. MPD says the program has been successful. MPD has also posted public interest notices in bars, warning women not to leave their drinks unattended (rapists sometimes slip drugs into unattended drinks to incapacitate a victim). Such public outreach can be an important tool to rebuild confidence in MPD, to the extent that it was damaged after the HRW Report.

These outreach efforts must be continued if the District is going to continue to improve its response to sexual assaults.

## **VIII. BEST PRACTICES**

### **A. Advocates**

At least eight states (Arizona, California, Iowa, Louisiana, Montana, New York, Oregon, and Washington) have enacted statutes granting sexual assault victims the right to have an advocate present during the initial police interview; some of the eight extend the right to all police interviews. Other states permit advocates to be present by policy, rather than legislation. (Illinois and New Hampshire are two examples; see <http://www.rapevictimadvocates.org/services.asp> and <http://www.nhcadv.org/Whatwedo.cfm>). In an initial police interview, a friend or family member could serve as an advocate – being present simply to provide emotional support to the victim.

The independent experts in sexual assault investigations whom we consulted were unanimous in recommending that sexual assault victims in D.C. should have the right to have an advocate present in an initial police interview. NVRDC, the organization that currently provides D.C.’s advocates, agrees.



## **B. Citizen Complaints**

Cities throughout the United States use agencies such as OPC to provide citizens with an outlet to register misconduct complaints against officers. The breadth of misconduct that can be brought varies from city to city, but generally most are concerned with instances of alleged police harassment, excessive force, or conduct by an officer that is insulting, demeaning, or humiliating to a citizen.

In the District of Columbia, OPC has jurisdiction over six basic types of complaints: 1) harassment; 2) unnecessary/excessive force; 3) use of insulting or demeaning language; 4) discrimination based on race, color, religion, gender, sexual orientation, or physical handicap; 5) retaliation for filing a complaint; 6) failure to identify as an officer. (OPC was created under D.C. Code §§ 5-1102-1115 and was expanded through regulations published in the District of Columbia Register of August 30, 2002.) Once a complaint is filed, it is investigated by the staff of OPC and, if found to have merit, OPC can refer it to an independent hearing examiner, mediation, or the U.S. Attorney if it is found to warrant criminal prosecution. Some cities, notably Austin, Texas, have also empowered their Office of the Police Monitor to field complaints from sexual assault survivors concerning how, and if, a sexual assault claim is being investigated. In Kansas City, the Office of Citizen Complaints refers all complaints to the Internal Affairs division of the police department. These are broader mandates than OPC's. We understand that OPC's current narrow mandate exists because the prior, broader, mandate led to a large volume of complaints that overwhelmed OPC. A broader OPC mandate that covers all instances of police misconduct or failure to investigate – especially if it expressly covers sexual assault investigations – may result in a significant increase in complaints; that may, in turn, require that additional resources be devoted to OPC.

## **C. Training**

Crowell & Moring reviewed MPD's training program for sexual assault investigations, both within SAU and for MPD generally. We reviewed training descriptions and some written training materials. Summaries of each program appear below.

We also reviewed training programs from other cities, such as Austin, San Diego, and Kansas City, and looked for corollaries within MPD's training program.

## **D. MPD's Training Program**

### **1. By Outside Agencies**

- Sexual Assault Trauma
  - Presented by the Network for Victim Recovery (NVRDC)
  - For all members of SAU
  - Mandatory training

- October 10, 2012; two-hour course on trauma related to sexual assault
- December 12, 2012, program repeated for newly-assigned members of SAU
- Emerging Issues in Sexual Assault: International Conference on Sexual Assault, Domestic Violence and Stalking
  - Sponsored by End Violence Against Women International
  - For selected members of SAU, including seven detectives, one first line supervisor, and one manager
  - April 3–5, 2013 in Baltimore, Maryland
  - D.C. SART partners attended with MPD
  - Three-day conference highlighted promising practices and emerging issues in sexual assault, domestic violence and stalking
  - Conference was well-received by participants, who said it enhanced their knowledge of offender practices and victim experience
- DC Sexual Assault Response Team Retreat
  - Hosted by the Office of Justice Programs Diagnostics Center
  - February 20–21, 2013
  - Retreat included all member agencies of the D.C. SART; MPD representatives included the Commander of the Criminal Investigations Division, the Captain of the Special Investigations Branch, the manager of the Sexual Assault Unit, and two first line supervisors from SAU.
  - Objectives included team building, establishing unified goals, and developing a single vision for creating a successful SART program. Current protocols were discussed and reassessed; proposals for ensuring appropriate SART response were discussed.
- DNA Evidence
  - Took place in April 2013 at the Department of Forensic Science Consolidated Forensics Laboratory

- For members of the Criminal Investigations Division, including the SAU
- Two-hour course on DNA science and services provided by the Department of Forensic Science, including the handling of Sexual Assault Nurse Exam Kits and other DNA evidence recovered from crime scenes.
- Victim Interview Techniques
  - Presented by Joanne Archambault of End Violence Against Women International
  - May 29-30, 2013
  - For all members of SAU
  - Designed to enhance detectives' skills and demeanor in victim interviews.
  - Members of the Victim Services Unit and non-SAU detectives and supervisors were invited to attend.

## **2. Internal Departmental Training Initiatives**

- 2013 Professional Development Training
  - The calendar year 2013 MPD Professional Development Training program includes a four-hour training block on responding to sexual assaults.
  - Instruction is provided by members of SAU and the D.C. Rape Crisis Center
  - Mandatory training for all officers and detectives
  - Focus is on improving MPD's initial response; including methods to minimize victims' trauma, conducting preliminary investigation, and handling a crime scene.
- Sexual Assault Investigation On-Line Training
  - In August 2012, the on-line training module "Adult Sexual Assault Investigations" was developed for all sworn members to complete.
  - Includes: importance of first responders' attitudes towards victims; addressing medical concerns; collecting pertinent information to

establish the assault; and notifying SAU to have a detective respond to the scene.

- Human Trafficking and Victims of Human Trafficking On-Line Training
  - In May 2012, the on-line training module “Human Trafficking” was developed for all sworn MPD members to complete.
  - The presentation details the elements and effects of human trafficking and response to victims of human trafficking.
- Daily Roll Call Training
  - March 2013:
    - Roll call training was given by first line supervisors using a scenario in which officers respond to a call about suspicious activity in a vehicle.
    - The scenario involves a man and a woman in the back seat of the car with fogged-up windows, where the man’s fly is down when he gets out of the vehicle and the woman is laying in the back seat with no underwear and her skirt hiked up over her hips. She is incoherent and cannot identify her location; the man does not know her proper name.
    - The training reinforces how officers should respond in this situation, which includes detention of the man, calling the Fire Department for medical assistance, calling for an SAU detective, and minimizing further emotional trauma to the victim.
  - May 2013:
    - Roll call training was provided by first line supervisors using a scenario in which officers respond to an “investigate the trouble” call.
    - The scenario involves a woman sitting on the steps in front of a building in the daylight, disoriented and dazed, with no purse or belongings and wearing clothes for going out to a club or party. The woman says that she is missing her undergarments and has pain in her lower abdomen.
    - The training reinforces how officers should respond in this situation, which may involve a sexual assault. Officers are instructed to immediately call SAU and to minimize further emotional trauma to the victim.

- Recruit Officer Training
  - The Metropolitan Police Academy's Recruit Officer Training Program includes 40 hours of classroom instruction regarding crimes against persons as established by D.C. Code. As part of training, recruit officers receive instruction on sexual assault offenses.
  - Recruits are provided with an electronic copy of Departmental General Orders and have online access to all new, modified or updated orders.
  - Recruit officers are advised during this training that an interview with an alleged sexual assault victim shall be limited to only the most necessary information.
- On-the-Job SAU Training
  - According to SAU detectives and the U.S. Attorney's Office, investigators new to SAU receive on-the-job training with current detectives.

### **3. Other Cities' Training Programs**

- Austin, TX:
  - Cadets receive 6 ½ hours of training from the Sex Crimes Unit, which includes specific training on trauma's impact and how victims may respond in interviews.
  - Officers receive training focused on non-stranger assaults.
  - The Austin SANE nurses do training on forensic evidence gathering.
  - Outside speakers have been brought in to discuss drug-related sexual assaults.
- San Diego, CA:
  - Sexual assault detectives receive specialized training on interviewing traumatized witnesses and undergo 32 hours of training on sexual assault investigation topics.
  - Orientation and training for new members of the Sex Crimes Unit, including an on-the-job two-week training period with two experienced detectives; this training period includes three witness

interviews. There is also a 13-procedure checklist included with this training.

- Kansas City, MO:
  - Prior to joining the Special Victims Unit as a detective, officers go through an intensive testing program and training with a senior detective for three months.
  - The local rape crisis center provides training to officers, including (1) a two- hour training and role play with all new recruits; (2) continuing training through exercises at roll call.
- New York, NY:
  - Members of the Special Victims Unit receive two weeks of training annually.

## **IX. RECOMMENDATIONS**

### **A. Advocates in Interviews**

The Council should adopt legislation giving sexual assault victims the right to have an advocate present in interviews with the police, and during a SANE examination. This recommendation includes the following caveats:

- Advocates should not become witnesses in the case.
- Police officers and other investigators should have the right to exclude an advocate whose presence is disrupting an interview.
- Neither SANE exams nor police interviews should be delayed if an advocate is not available, as long as a victim is willing to proceed.
- Police investigators should be able to speak with victims on an informal basis (for example, to discuss the status of a case or scheduling issues), without the presence of an advocate.

### **B. Independent Expert Advisor**

The District of Columbia should retain an expert in sexual assault investigations and training to serve as a consultant to MPD and to the other members of the SART. This expert should be available to work with all the members of the SART to ensure that the best possible services are provided in sexual assault cases. Moreover, the Independent Expert should review police practices to ensure that policies are implemented properly and that sexual assault investigations have a victim-centered approach. The Independent Expert should also be available to make reports to the City Council on the implementation of recommended changes in

the handling of sexual assault cases and otherwise assist with the Council's oversight responsibilities.

## **C. Training**

### **1. Training For MPD**

MPD's training program should be expanded. SAU's on-the-job training for new SAU investigators is appropriate and necessary, but we note that several cities offer and make mandatory specific training on interviewing and working with sexual assault victims. The Independent Expert Advisor should consult with MPD about what additional training is needed.

MPD should continue to update its training modules while selecting different members of the SAU to attend limited-enrollment courses. Where trainings are limited to only a few SAU members, SAU supervisors should ensure that participants have a forum to share their experiences and lessons learned with other members of SAU.

In the past, new detectives within SAU were given intensive training, but this training has not taken place recently. We recommend that MPD consider again offering this training to current SAU detectives, and to new investigators in the future.

We recommend that SANE nurses provide training to SAU detectives about how SANE exams are conducted. We also suggest that Assistant United States Attorneys who prosecute sex crimes participate in that training. Likewise, we recommend that advocates and law enforcement cross-train each other. Detectives should teach advocates about the course of an investigation, and what victims and advocates should expect, while advocates should teach police officers (and, ideally, prosecutors) about their function, and their experiences working with victims. This would help communication with victims concerning what they can and should reasonably expect as the process moves forward.

We recommend annual training on the latest techniques in victim-centered approaches to investigation as well as victim interview techniques. This may be done by the NVRDC or another advocacy group, and should include some role playing or real life situations.

### **2. Training for SANE Nurses and Advocates**

MPD should provide training to SANE nurses and advocates on how sexual assaults are investigated.

### **3. Training by and for the U.S. Attorney's Office**

Although the U.S. Attorney's Office is not under the Council's jurisdiction, we recommend that prosecutors be included in cross-agency training. In the past, the U.S. Attorney's office has participated in joint training with SAU. This joint training should be re-established.

#### **D. Victim Satisfaction Surveys**

MPD should seek out feedback from sexual assault victims through surveys. MPD is already engaged in designing a process for such surveys.

#### **E. Confidentiality**

The Council should adopt legislation that protects the confidentiality of sexual assault victims. Rape victims' names and addresses should not be public information. The Council should consider legislation specifically permitting reports to be made anonymously.

#### **F. Citizen Complaints and Oversight**

The Council should consider broadening OPC's mandate to encompass sexual assault victims' complaints about how MPD has handled their case, including lack of investigation or treating a victim poorly. The existing six-week time limitation should be extended to give complainants ample opportunity to complain, even after a case is closed. The Council should consider requiring OPC to report cases to MPD's Internal Affairs Division as a matter of course. This would apply to all cases, not just sexual assaults. The Council should take a closer look at OPC's structure and resources to determine whether additional changes should be made.

The D.C. Council should, within its regular oversight capacity, review MPD's handling of sexual assault cases.

#### **G. Mandatory Reporting**

MPD supports legislation requiring professionals working with sexual assault victims to report police misconduct to MPD. We recommend that the Council consider such legislation.

### **X. ANALYSIS OF HRW'S RECOMMENDATIONS TO MPD**

HRW made numerous recommendations to MPD in its report. Many of those suggestions have already been implemented, and MPD has agreed to others. We summarize below what we understand has been implemented, and make additional recommendations with respect to several of the HRW recommendations, as follows:

- *Include treatment of victims as a factor in evaluation of Sexual Assault Unit detectives, and transfer detectives out of SAU if they are the subject of related complaints.*
  - SAU detectives who are the subject of repeated complaints are transferred out of SAU. MPD is developing a more robust selection process for detectives assigned to SAU. The selection process will incorporate interviews of potential candidates and other means of assessing the candidates' commitment to a multi-disciplinary response and a victim-centered approach to investigating cases, and demonstrated skill in working with traumatized victims.



- *Establish regular multidisciplinary review of closed cases to discuss ways to improve the investigation and prosecution of sexual assault cases as well as the treatment of victims.*
  - MPD has agreed that this would best be handled through SART.
- *Provide referral information for counseling for all victims who report sexual assault.*
  - MPD detectives provide this information. MPD's victim services personnel also provide these referrals. The Expert Consultant should advise MPD on whether the information they provide is sufficient.
- *Provide a comfortable and private place for victims to be interviewed at the SAU.*
  - We visited such a room at SAU. The Council should consider offering additional funding to improve the comfort level of the room.
- *Allow at least one sleep cycle before in-depth interview.*
  - MPD has changed its Standard Operating Procedure to incorporate this recommendation. The Expert Consultant should confirm that it is being properly implemented.
- *Regularly train all police officers and recruits to understand the realistic dynamics of sexual assault (including non-stranger cases and drug or alcohol-facilitated assaults), the effects of trauma and proper treatment of victims.*
  - This type of training is given to all Academy recruits and more senior members of MPD. The definition of "regularly" should be discussed between MPD and the expert we have recommended retaining, and ongoing training should be planned.
- *Train detectives to interview sexual assault victims appropriately using trauma-informed techniques and to understand the impact of trauma on victims of sexual assault; investigate non-stranger and drug facilitated sexual assaults; and how to document sexual assault using the language of non-consensual sex.*
  - MPD trains SAU detectives in these techniques.
  - MPD needs to train all MPD officers to appropriately use these techniques as well.
- *Ensure that forensic evidence kits and other evidence are collected regularly.*

- Rather than picking up kits based on SANE's individual requests, MPD makes regularly-scheduled pick-ups at WHC. There does not appear to be a problem with kits not being picked up.
- *Ensure the provision of services to victims within MPD.*
  - MPD has added two VSU staff members to work with sexual assault victims. The positions are funded by a two-year grant, and the Council should ensure funding when that grant ends. These staff members should be trained in the same victim-centered approach as MPD officers.
- *Request regular reports on implementing recommended changes on handling sexual assault cases from MPD a part of the Council's regular performance oversight hearings.*
  - This is a recommendation to the Council, not MPD. We recommend that the City Council retain an Independent Expert Advisor to assist with oversight reports.
- *Protect the confidentiality of all sexual assault victims.*
  - This is a recommendation to the Council, not MPD. MPD strongly supports this recommendation and has, in the past (and unrelated to the HRW Report), asked the Council to amend existing legislation to keep victims' confidential information private. The Council did not pass the legislation. We adopt the recommendation, which is discussed above.

## **XI. SUMMARY OF RECOMMENDATIONS TO THE COUNCIL:**

### **A. Legislation:**

- Advocates
- Victim Confidentiality
  - Keep victims' names and addresses out of the public record.
  - Permit victims to make anonymous complaints.
- Mandatory Reporting

### **B. Oversight:**

- Review the mandate and function of OPC, and consider changes where necessary to ensure that sexual assault victims have a meaningful complaint process.

- Request regular reports on implementing recommended changes on handling sexual assault cases from MPD a part of the Council's regular performance oversight hearings.
- Ensure funding for sexual assault victims' services within MPD, and training for staff providing those services.
- Provide funding for retention of an expert consultant to ensure that MPD's handling of sexual assault investigations meets the highest national standards.
- Provide funding for increased training for handling sexual assault investigations.

## **XII. CONCLUSION**

MPD did not fail to document and investigate sexual assault cases in 170 instances as HRW asserted in its January 2013 report. But, while the HRW Report is flawed, the victims' complaints it contains are real. Although MPD has improved its treatment of victims and its handling of sexual assault investigations dramatically since the time of many of the incidents in the report, detectives did mishandle [some](#) investigations. MPD should continue in the direction it is headed, with the assistance of an independent expert consultant, the cooperation of the other SART member organizations, and the Council's oversight. The Council should adopt legislation to facilitate improvement within MPD and across the spectrum of services provided to sexual assault victims in D.C.

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## **THE CROWELL & MORING TEAM:**

***Keith Harrison, Co-Leader (Partner, D.C. Office).*** Mr. Harrison is a former Assistant District Attorney in Manhattan, New York; he prosecuted numerous sex crimes, including handling investigations, grand jury presentations and jury trials. In private practice, Mr. Harrison has over 20 years of experience in conducting confidential internal investigations.

***Jody Goodman, Co-Leader (Counsel, D.C. Office).*** Ms. Goodman is a former Assistant United States Attorney in D.C. and Assistant State Attorney in Miami-Dade County, Florida. She handled grand jury investigations, trials, and appeals in sex crimes cases. In private practice, Ms. Goodman has over 15 years of experience in litigation and investigations.

***Florence Prioleau (Partner, D.C. Office)***

***Namrata Kotwani (Associate, New York office)***

***Olivia Lynch (Associate, D.C. Office)***

***Alison Share (Associate, D.C. Office).***

***Josh Tzucker (Counsel, D.C. Office)***

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We would like to thank Linda Fairstein of K2 Intelligence for providing expert guidance on sexual assault investigations. Ms Fairstein served in the office of the New York County District Attorney from 1972 through 2002, where she was Chief of the Sex Crimes Prosecution Unit. Ms. Fairstein is the author of *Sexual Violence: Our War Against Rape* (William Morrow & Co. 1993).